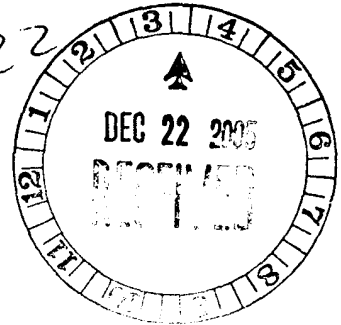


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FAX (202) 296-3939
j.heffner@verizon.net

ORIGINAL



BY HAND

December 22, 2005

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street
Washington, D.C. 20423-0001

RE: STB Finance Docket No. 34813, New York New Jersey
Rail LLC and New York Cross Harbor Railroad Terminal
Corp -- Transaction within a corporate family exemption

Dear Mr. Williams:

On behalf of Petitioners New York New Jersey Rail LLC and
New York Cross Harbor Railroad Terminal Corp, I am filing an
original and ten copies of a Verified Notice of Exemption under
49 CFR 1180.2(d)(3) for a corporate family transaction involving
these parties.

I am also enclosing one check payable to the Board for
\$1,100 to cover the applicable filing fee and a disk formatted in
Wordperfect 8.0 containing the filing.

Please date stamp and return one copy of this filing.

Sincerely yours,



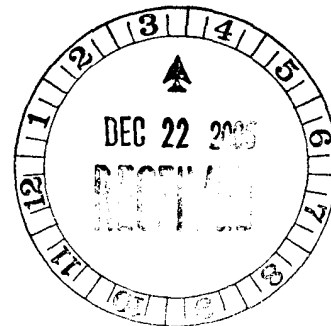
John D. Heffner

Enclosures

cc: Mr. James Cornell

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34813



215422

NEW YORK NEW JERSEY RAIL LLC AND
NEW YORK CROSS HARBOR RAILROAD TERMINAL CORP
-- TRANSACTION WITHIN A CORPORATE FAMILY EXEMPTION --

VERIFIED NOTICE OF EXEMPTION
UNDER 49 CFR 1180.2(d)(3)

Respectfully submitted,
John D. Heffner
John D. Heffner, PLLC
1920 N Street, N.W.
Suite 800
Washington, D.C. 20036
Counsel for Petitioners

FILED

DEC 22

TRANSPORTATION

Dated: December 22, 2005

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34813

NEW YORK NEW JERSEY RAIL LLC AND
NEW YORK CROSS HARBOR RAILROAD TERMINAL CORP
-- TRANSACTION WITHIN A CORPORATE FAMILY EXEMPTION --

VERIFIED NOTICE OF EXEMPTION
UNDER 49 CFR 1180.2(d)(3)

Comes now New York New Jersey Rail LLC and New York Cross Harbor Railroad Terminal Corp (individually referred to as "NYNJ" and "NYCH" and collectively as "Petitioners"), by and through Counsel, and state as follows:

1. Pursuant to the provisions of §1180.4(g) of the Board's Railroad Consolidation Rules, 49 C.F.R. 1180, Petitioners hereby give notice of a transaction which qualifies for exemption under §1180.2(d)(3) as a transaction within a corporate family.

2. NYNJ is a newly formed limited liability company established and owned by Gordon Reger ("Reger"), an individual. Reger established NYNJ to facilitate the acquisition of and/or investment in short line and regional railroad companies such as NYCH.

3. NYCH is a class III short line railroad common carrier within the meaning of the ICC Termination Act and the Board's decisions thereunder. Entities controlled by Mr. Reger own a majority of NYCH's outstanding stock and, by reason of that ownership, indirectly control NYCH. Neither Mr. Reger nor entities controlled by Mr. Reger currently control any other short line common carrier railroad subject to the Board's jurisdiction. Originally established in 1983, NYCH owns and operates railroad tracks and facilities at Greenville, Jersey City, NJ, and Brooklyn, NY, and operates between these points by means of a car float across New York Harbor. A copy of NYCH's operating authority is attached to this notice as Exhibit A.

4. Petitioners propose to undertake the following corporate family transaction which they believe is subject to the Board's jurisdiction and will require Board approval absent an exemption. NYCH will transfer all or substantially all of its railroad assets including track, right of way, car ferry equipment and float bridges, locomotives, rolling stock, automobiles, trucks, work equipment, tools, and other personal property, and intangible assets required for railroad operation to NYNJ, a newly established limited liability company. NYNJ will assume all of NYCH's rights and obligations to provide service as a common carrier and will provide the railroad service historically provided by NYCH.

5. Under §1180.2(d)(3) of the Board's consolidation rules, certain transactions are automatically exempt from the prior approval requirements for common control under 49 U.S.C. 11323. Specifically, §1180.2(d)(3) exempts transactions within a corporate family that do not result in adverse changes in service levels, significant operational changes, or changes in the competitive balance with carriers outside the corporate family.

6. The proposed corporate changes identified in this notice will be limited to entities controlled by Mr. Reger. The result of this transaction will be for NYCH to transfer to NYNJ NYCH's rights and obligations to provide service as a common carrier railroad. This change will not adversely affect service levels, result in any operational changes on the subject lines, or affect the competitive balance with carriers outside the corporate family.

7. In order to claim the §1180.2(d) exemption, §1180.4(g) requires the filing of a verified notice of exemption furnishing the information requested in §§1180.6(a)(1)(i)-(iii), (a)(5), (a)(6) and (a)(7)(ii) of those rules.

8. Information about the parties §1180.6(a)(1):

Name: New York New Jersey Rail, LLC

Address: 2730 Transit Road
West Seneca, NY 14224

Telephone: (716) 675-1200

Name: New York Cross Harbor Railroad Terminal Corp

Address: 2730 Transit Road
West Seneca, NY 14224

Telephone: (716) 675-1200

Legal counsel to whom questions should be addressed:

John D. Heffner, Esq.
John D. Heffner, PLLC
1920 N Street, N.W.
Suite 800
Washington, D.C. 20036
(202) 263-4180

Schedule for consummation:

On or after December 29, 2005, seven days from the date of this notice.

Purpose(s) to be accomplished by the transaction:

The proposed transfer of NYCH's rights and obligations to provide service as a common carrier to a new entity [NYNJ] will facilitate better access to equity and debt capital which will enable the improvement of the Greenville, NJ, and Brooklyn, NY, rail yards, and enable the improvement of the condition of NYCH's equipment, create a safer working environment for railroad employees, and increase the railroad's ability to serve the freight transportation needs of the public in the New York, New Jersey, New England, and Mid Atlantic markets.¹

¹ On numerous prior occasions the Board has exempted similar transactions involving the "spin off" or transfer of railroad operations, common carrier obligations, railroad assets, and leased lines from one commonly owned short line rail carrier to a newly established or existing corporate sibling. See, e.g., Maryland and Pennsylvania Railroad Company and Yorkrail, Inc.-Intracorporate Family Transaction Exemption (STB FD No. 33815, served Dec. 13, 1999) (permitting the physical assets of two short line rail carrier affiliates being merged to transfer their respective rail lines to two newly formed limited liability companies under common control by the surviving corporate entity and rail carrier; Pioneer RailCorp and Michigan Southern Railroad Company-Corporate Family Transaction Exemption (STB FD No. 33941, served October 10, 2000) (transfer of operating leases to new affiliates); and Sierra Railroad Company-Corporate Family Transaction Exemption-Yolo Shortline Railroad Company (STB FD No. 34360, served June 23, 2003) (transfer of common carrier rights and obligations). Among the reasons cited by the petitioners

State(s) where proposed operations will be conducted
(§1180.6(a)(5)):

New Jersey and New York

Map showing relationship between NYCH and NYNJ:
§1180.6(a)(6)):

Attached hereto as Exhibit B.

Copy of agreement. §1180.6(a)(7)):

Not applicable. As yet, there is no written agreement documenting the transaction.

9. No labor protection is applicable to this transaction inasmuch as the only rail carriers involved are class III rail carriers. 49 U.S.C. 11326(c). Nevertheless, NYNJ will recognize the present collective bargaining unit for NYCH employees and will continue to compensate employees in accordance with the current NYCH collective bargaining agreement. In addition, NYNJ will perform pursuant to all other agreements covering or affecting rail operations including those between NYCH and its connecting railroads, NYCH and its customers, and NYCH and the City of New York.


10. The proceeding is exempt from environmental review

and accepted by the Board in past cases have included replacement of existing financing with new credit arrangements intended to provide increased financial liquidity and flexibility, simplification of corporate structure and management structure, preservation of favorable financing arrangements available to one corporate sibling, and improved operational efficiency. Bethlehem Steel Corporation, et al, Corporate Family Transaction Exemption, (STB FD No. 34101, served October 25, 2001); Maryland and Pennsylvania Railroad Company and Yorkrail, Inc.-Intracorporate Family Transaction Exemption (STB FD No. 33815, served Dec. 13, 1999); and Toledo, Peoria & Western Railway Corporation-Corporate Family Transaction Exemption-Marksman Corporation (STB FD No. 33659).

under 49 CFR 1105.6(c)(2)(i) because the proposed action will not cause any operational changes that exceed the threshold established in §1105.7(e)(4) or (5).

In addition, this proceeding is exempt from historic review under §1105.8(b)(1). Under this section a sale, lease, or transfer of rail line is exempt if rail operations will continue; further Surface Transportation Board approval is required to abandon service, and there are no plans to dispose of or alter properties subject to Board jurisdiction.

Respectfully submitted,


John D. Heffner
John D. Heffner, PLLC
1920 N Street, N.W.
Suite 800
Washington, D.C. 20036
Counsel for Petitioners

Dated: December 22, 2005

EXHIBIT A

SERVICE DATE

01

INTERSTATE COMMERCE COMMISSION

JUL 15 1983

DECISION

Finance Docket No. 30183

FD/EC
5

~~NEW YORK CROSS HARBOR RAILROAD TERMINAL CORP.~~ EXEMPTION FOR
OPERATION AND ISSUANCE OF SECURITIES

No. AB-219 (Sub-No. 2)

NEW YORK DOCK RAILWAY -- ABANDONMENT -- KINGS COUNTY, NY

Decided: July 8, 1983

By application filed June 3, 1983, the New York Cross Harbor Railroad Terminal Corp. (NYCH) seeks a certificate of public convenience and necessity under 49 U.S.C. 10901 to operate a terminal railroad in the New York, NY area. NYCH also seeks (1) an exemption to issue securities; (2) a waiver of filing fees; and (3) a waiver of any public hearing. In addition, NYCH filed a petition on May 3, 1983 seeking waiver of environment and energy data required under 49 C.F.R. 1150.7. In the alternative NYCH seeks an exemption under 49 U.S.C. 10505. The Brotherhood of Locomotive Engineers (BLE) protests the application. The New York Department of Transportation (NYDOT) has filed comments on the proposal. Numerous local businesses and governmental bodies have filed letters in support of the proposal.

NYCH seeks authority to conduct a rail and marine service in the Borough of Brooklyn, NY and between Brooklyn, NY and Greenville Yard in Jersey City, NJ. Operations are presently conducted by the New York Dock Railway (NYD). NYD has sought, however, authority to abandon all operations in Docket No. AB-219 (Sub-No. 2), New York Dock Railway -- Abandonment -- Kings County, NY.

NYD has agreed to sell assets necessary to conduct the described operations for \$1.5 million. The assets include tracks, locomotives, a tug, floats, floatbridges, and shop, work

and office equipment. NYD will also lease 4 carfloats to NYCH. NYCH has arranged to lease (1) Consolidated Rail Corporation's Greenville yard in Jersey City, NJ (2) New York City's Brooklyn Army Terminal, Bush Terminal and 65th Street Yard (when completed); and (3) the Atlantic Terminal owned by the Port Authority of New York and New Jersey.

To finance the purchase of NYD assets, NYCH has reached an agreement with Northbrook Leasing (Northbrook). Under this agreement, Northbrook will advance \$1.5 million to purchase the NYD assets. The property will be leased to NYCH for 5 years. At the end of this period NYCH will receive title to the assets from Northbrook for a nominal fee. NYCH has also arranged a loan of \$300,000 from the National Bank of North America for working capital. Both agreements will require NYCH to issue promissory notes.

The Commission may begin an exemption proceeding on its own motion. 49 U.S.C. 10505(b). While NYCH has applied for authority to operate under 49 U.S.C. 10901, it has alternatively requested an exemption. It is appropriate to treat its application as a petition for exemption from 49 U.S.C. 10901 under 49 U.S.C. 10505.1/ We also note that under the terms of the loan agreement, Northbrook will acquire title to various NYD assets including "track" located at various terminal facilities. Commission authorization is required if a non-carrier acquires rail line unless the acquisition involves spur, industrial, team, switching, or side tracks and the tracks are located or intended to be located entirely in one State (49 U.S.C. 10907). Because it is unclear whether Northbrook's track acquisition is within

1/ We will dismiss NYCH's petitions to waive: (1) environment and energy data under 49 C.F.R. 1150.7 because this regulation is not applicable in exemption proceedings; (2) oral hearing because oral hearings are generally not required in exemption proceedings and no need has been shown for one here; and (3) filing fees because exemption petitions do not require any fee. NYCH's fee will be refunded.

our jurisdiction, on our own motion we will initiate a proceeding to exempt Northbrook from 49 U.S.C. Subtitle IV, and will consider this exemption in this decision.

Pursuant to 49 U.S.C. 10505, the Commission shall exempt a transaction when it finds that (1) continued regulation is not necessary to carry out the transportation policy of 49 U.S.C. 10101a, and (2) either (a) the transaction is of limited scope or (b) regulation is not necessary to protect shippers from the abuse of market power.

The rail transportation policy will be fostered by the proposed exemptions. Exemption will minimize the need for Federal regulatory control over the rail transportation system, expedite regulatory decisions, and reduce regulatory barriers for entry into and exit from the industry.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. Exemption will merely allow NYCH to substitute its services for those currently provided by NYD. Exemption will also further the interest of existing shippers by assuring continued service over lines which otherwise would be subject to abandonment. We note that numerous shippers support this proposal.^{2/} Since we have determined that regulation is not necessary to protect shippers from an abuse of market power, it is not necessary to consider whether the transactions are of limited scope. However, we note that the operation is limited to small sections of Brooklyn and Jersey City.^{3/}

2/ Monarch Wine Co., Inc.; Consolidated Edison Company of New York, Inc.; Gusseo Manufacturing, Inc.; Cumberland Parking Corporation; New York Rail Car Corporation; Gem Parking Corporation; Tri-Borough Transportation Corporation; Express Haulage Corporation; Davidson Pipe Supply Co., Inc.; 73 businesses represented by Southwest Brooklyn Industrial Development Corp.; the Brooklyn Chamber of Commerce; and many businesses in Brooklyn by the Borough of Brooklyn.

3/ NYDOT has filed comments addressing NYCH's ability to perform the described services and assume certain NYD contractual obligations. NYDOT has not demonstrated that exemption should be denied. In light of NYD's announced intention to abandon this line and the absence of any other substitute rail carriers, we continue to conclude that exemption should be granted.

* The exemption here will enable NYCH to substitute its services for NYD. Accordingly, NYD's abandonment application is no longer appropriate and will be dismissed.

BLE requests that the Commission impose the conditions contained in New York Dock Ry. - Control - Brooklyn Eastern Dist. 360 I.C.C. 60 (1979) and require NYCH to grant first preference to NYD and Brooklyn Eastern District Terminal employees. Under 49 U.S.C. 10505(g) we cannot relieve a carrier of its obligation to protect employees. The imposition of employee protective conditions in proceedings under 49 U.S.C. 10901 is discretionary. No need has been shown for their imposition.^{4/}

Our initial review of the proposal indicates that the exemptions will not affect either the quality of the human environment or energy consumption.

It is ordered:

1. New York Cross Harbor Railroad Terminal Corp. is exempted from the requirements of 49 U.S.C. 10901 to conduct the described terminal railroad operations in the New York, NY area.
2. NYCH's issuance of securities under the described agreements are exempted from the requirements of 49 U.S.C. 11301.
3. Northbrook Leasing's acquisition of the described line is exempted from the requirements of 49 U.S.C. Subtitle IV.
4. Docket No. AB-219 (Sub-No. 2) New York Dock Railway -- Abandonment -- Kings County, NY, is dismissed.

^{4/} The remaining exemptions do not involve any action for which labor protection is required.

5. NYCH's petitions for waiver filed May 3, 1983 and June 3, 1983 are dismissed.

6. Notice shall be published in the Federal Register.

7. The parties shall notify the Commission within 30 days of consummation.

8. These exemptions shall be effective on July 18, 1983.

9. Petitions to reopen must be filed by August 8, 1983.

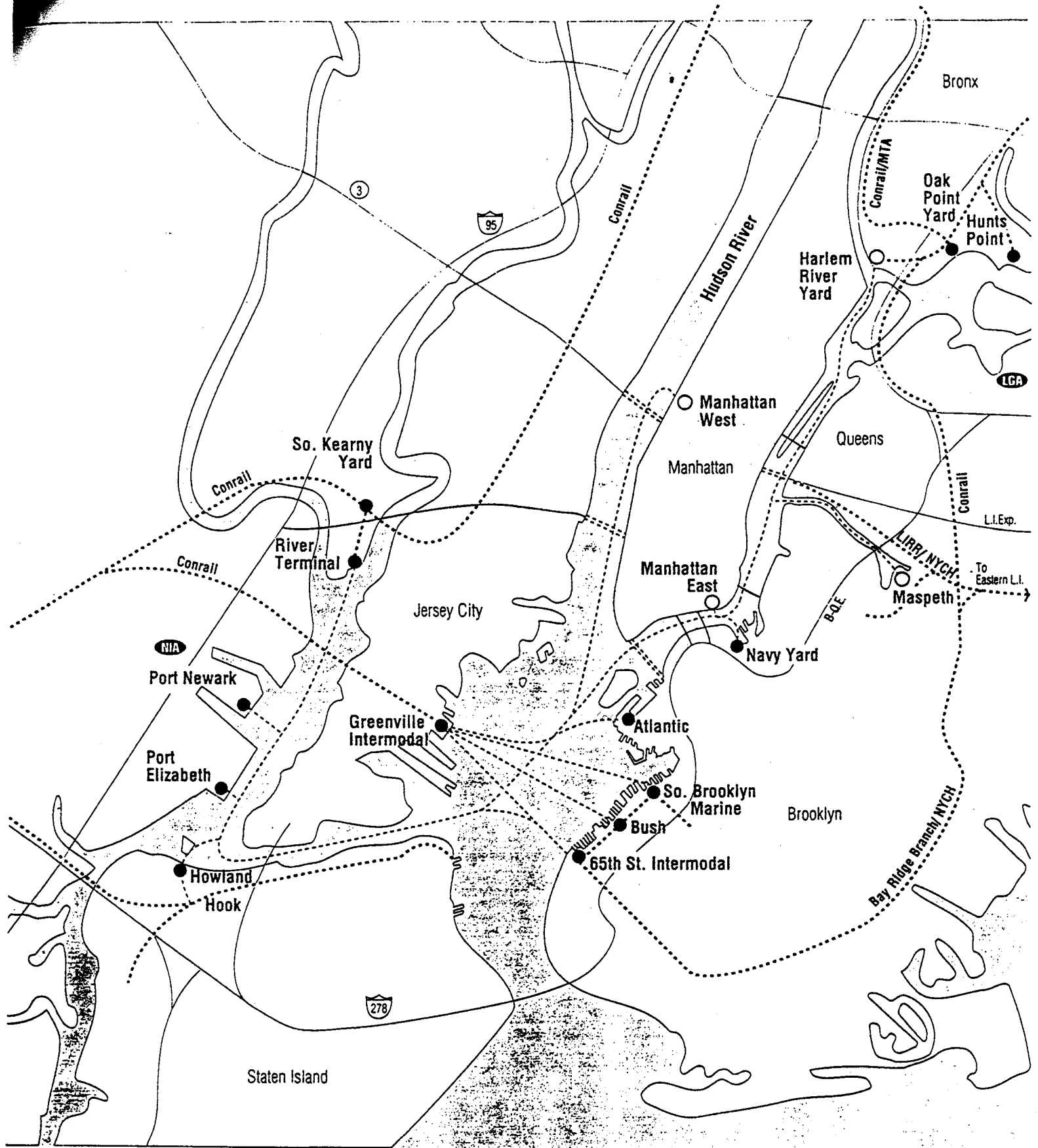
By the Commission, Division 1, Commissioners Andre, Taylor, and Sterrett. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

(SEAL)

Agatha L. Mergenovich
Secretary

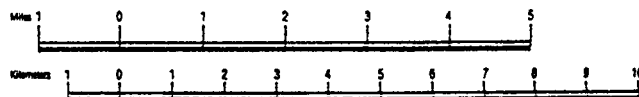
EXHIBIT B

To Selkirk Hurdle



Railroad Line - - - - -
 NYCH Float Barge
 Tunnels - . - . - .
 Existing Facility ●
 Proposed Facility ○

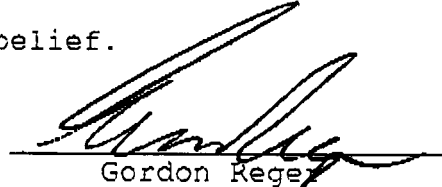
Scale



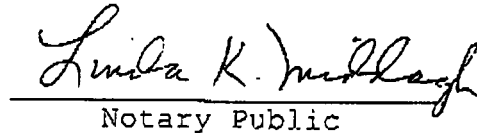
VERIFICATION

STATE OF NEW YORK)
) SS.:
TOWN OF WEST SENECA)

Gordon Reger, being duly sworn according to law, hereby deposes and states that he is authorized to make the Verification, has read the foregoing document, and knows the facts asserted therein are true and accurate as stated, to the best of his knowledge, information and belief.


Gordon Reger

Subscribed and sworn to before me, a Notary Public, in and for the Town of West Seneca in the State of New York this 22nd day of December, 2005.


Notary Public

My Commission expires:

5/5/07

LINDA K. MIDDAGH
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 5/5/2007